



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 10, 1996

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0011

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 37633.

The City of Houston received a request for the following information:

1. The number of police calls made during the last five years to The Windsor Park Apartments, 7900 Creekbend, Houston, Texas 77071;
2. Copies of all documents relating to a rape which occurred on August 14, 1995 at The Windsor Park Apartments;
3. Copies of all police calls to The Windsor Park Apartments during the last five years;
4. Copies of any and all files related in any way to the frequency of criminal activity at The Windsor Park Apartments; and
5. For each of the last five years, copies of all crime statistics and/or 911 calls received and/or responded to within the geographic location closest to The Windsor Park Apartments.

You state that you have provided the requestor with documents responsive to Items 1, 3, 4 and 5. You assert that documents responsive to Item 2 are excepted from required public disclosure by sections 552.108 and 552.103 of the Government Code.

Section 552.108(a) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime."¹ When applying section 552.108, this office distinguishes between cases that are under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

With regard to sexual assault cases, section 552.101 of the Government Code excepts from public disclosure some information not excepted under section 552.108. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982) we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. See also *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

You state that the sexual assault to which Item 2 refers is currently under investigation; therefore, under section 552.108, information not generally found on the first page of the offense report is excepted from disclosure.² Additionally, under section 552.101, you must withhold the identity of the sexual assault victim. Where the sexual assault victim is also the complainant, her/his name will generally appear on the first page of the offense report; nevertheless you should withhold the identity of the victim complainant. As section 552.103 would not except from disclosure any information not

¹Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 7, 1995 Tex. Sess. Law Serv. 5127, 5131.

²Enclosed is an excerpt from Open Records Decision No. 127 (1976) which lists the types of information which are available to the public.

already excepted under sections 552.108 and 552.101, we do not address your section 552.103 claim.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and is not a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 37633

Enclosures: Summary of Open Records Decision No. 127 (1976),
Submitted documents

cc: Ms. Elizabeth B. Hawkins
O'Quinn, Kerensky, McAninch & Laminack
2300 Lyric Centre Building
440 Louisiana
Houston, Texas 77002
(w/ Summary of Open Records Decision No. 127 (1976))

I. TYPES OF INFORMATION AVAILABLE TO THE PUBLIC

1. Arrestee's social security number, name, aliases, race, sex, age, occupation, address, police department identification number, and physical condition.
2. Offense for which suspect arrested.
3. Identification and description of complainant
4. Location of crime
5. Time of occurrence
6. Vehicle involved
7. Property involved
8. Detailed description of offense
9. Names of arresting officers
10. Date and time of arrest
11. Place of arrest
12. Details of arrest
13. Description of weather
14. Booking information
15. Court in which charge is filed
16. Notation of any release or transfer
17. Bonding information
18. Numbers for statistical purposes relating to modus operandi of those apprehended

II. TYPES OF INFORMATION PROTECTED BY SECTION 552.108 DURING PENDENCY OF CRIMINAL INVESTIGATION

1. Identification and description of witnesses
2. Synopsis of confession
3. Officer's speculation as to suspect's guilt
4. Officer's view of witness credibility
5. Statements by informants
6. Ballistics reports
7. Fingerprint comparisons
8. Blood and other lab tests
9. Results of polygraph test
10. Refusal to take polygraph test
11. Paraffin test results
12. Spectrographic or other investigative reports
13. Personal History and Arrest Record, including
 - A. Identifying numbers (such as TDC numbers)
 - B. Physical description with emphasis on scars and tattoos
 - C. Marital status and relatives
 - D. Mugshots, palm prints, fingerprints, and signature
 - E. Chronological history of any arrests and disposition

See Open Records Decision No. 127 (1976).